IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 12603 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NISHIT @ MUNNO PETHALJIBHAI CHAVDA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR B B Naik, sr.counsel for Mr HRIDAY BUCH for Applicant(s) : 1,
Mr S P Hasurkar, APP for Respondent(s) : 1,
Mr T.S. Nanavati with Mr Ajay Jagidar for the complainant

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/10/2007

ORAL JUDGMENT

1. RULE. Mr S.P. Hasurkar, learned APP waives service of notice of Rule on behalf of respondent-State.

Mr T.S. Nanavati with Mr Ajay S. Jagirdar, learned advocate is permitted to file Vakalatnama on behalf of the complainant only for the limited purpose to assist the Addl. Public Prosecutor.

2. Complainant, Pravinbhai Talakshibhai Kotak has lodged a complaint before P.S.O., Navrangpura police station, Ahmedabad for offences punishable under sections 452, 294 (b), 506 (2), 507 read with 114 of Indian Penal Code ("IPC" for short) and under section 25 (1-B)(a) of the Arms Act. The present applicant is apprehending arrest in connection with C.R. No. I-693 of 2007 registered before Navrangpura police station for the aforesaid offences and, therefore, the applicant has filed this application under section 438 of the Code of Criminal Procedure, 1973 for Anticipatory Bail.

3. It is alleged in the complaint that the complainant is carrying on business of construction and he is having his office at ISCON Mall situated at C.G. Road. As per the complaint, the complainant and accused Nishit Chavda are having business relation since 1996 and there was understanding with regard to sale of 84 vighas of lands situated at Nidhrad, Taluka Sanand. Accordingly, transaction of 67 vighas of lands has taken

place. For the remaining 17 vighas of land, sale deed could not be executed due to shortage of money.

4. It is alleged in the complaint that the present applicant-accused and one unidentified person entered the office of the complainant situated at C.G. Road and asked to execute a sale deed of the remaining 17 vighas of land. It is alleged in the complaint that the complainant had asked the accused to meet the younger brother of the complainant as he looks after the administration and transaction of the sale etc. On saying this, the present applicant accused got provoked and excited and started abusing the complainant. According to the complaint, at that time, the accused took out a revolver and put it on the table of the complainant. As the complainant tried to restrain the applicant, he has allegedly threatened to kill the complainant if the issue of the land is not settled expeditiously and the applicant and the other person went away. It is also alleged in the complaint that thereafter at 2.17 p.m., the complainant received a telephone from the elder brother of the applicant i.e., Jagdishbhai Chavda, co-accused in this case, who also threatened the complainant to face the dire consequences. Hence the present complaint was lodged as

stated above.

5. Mr B.B. Naik, learned Sr.Counsel, appearing with Mr Hriday C Buch, learned advocate for the applicant-accused, vehemently argued that the complaint is filed after a lapse of 3 or 4 hours of the incident, though the Navrangpura police station is situated near the office of the complainant. Secondly, he submitted that taking into consideration the nature of offence and the story put forward by the complainant, prima facie, it seems a false complaint is filed and as the present accused is a permanent resident of Ahmedabad and is a Director in a Pharmaceutical company, there is no possibility of his absconding and taking into consideration the gravity of the offences, the application of the present applicant deserves to be allowed. It is also submitted by Mr Naik that liberty of a person is more important and till the trial is not over, it should be presumed that he is innocent and therefore, in light of the judgment delivered by the Constitutional Bench of the Hon'ble Apex Court, in the case of ***Gurbaksh Singh v. State of Punjab*** (AIR 1980 SC 1632), the present application deserves to be allowed. On relying upon another judgment delivered by this court in the case of ***Solanki Ravibhai v. State (***1992 (1) GLR

631), he argued that with an ulterior motive to extract more money from the present applicant, this false complaint is filed. He also submitted that Anticipatory Bail application moved by the co-accused Jagdishbhai Chavda was granted by the Sessions Court by its order dated 15.10.2007 in Criminal Misc.Application No. 3812 of 2007. It is also submitted by Mr Naik that the judgment decided by a Division Bench, cited by the learned APP (2005) 4 SCC 303) has no binding on this case as the judgment reported in AIR 1980 SC 1632 (supra), is the decision of five Judge Bench of the Hon'ble Apex Court. He submitted that in ***Solanki Ravibhai's case (supra)***, this court has taken a view that ”it is known that a pronouncement of law by a Division Bench of the Court is binding on a Division Bench of the same or a smaller number of Judges and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitutional Bench of the Court. Keeping this in mind, it is clear that the pronouncement of law by the Supreme Court in ***Gurbakshsingh's case*** *(supra)* is a precedent to be followed by this court.”

6. Mr Naik also submitted that the allegation that the applicant threatened and abused the complainant

is completely false and baseless. The allegation that the applicant had removed his revolver is also baseless. According to him, in the chamber of the complainant, there are two closed-circuit cameras and the said camera records each and every movement and the entire dialogue alleged to have taken place must have been recorded on this security system. He apprehended that the investigation has not been carried out on this line and under this circumstance, the applicant may be granted Anticipatory Bail.

7. This court is in total agreement with the view expressed by the Apex Court as well as this court in the case of ***Solanki Ravibhai v. State (***1992 (1) GLR 631). In the opinion of this court, while deciding Anticipatory Application, the court has to keep in mind the following aspects:

(i) Gravity of the offence and the manner in which the incident took place,

(ii) Prima facie the involvement of the accused in the crime,

(iii) whether the complaint was lodged immediately after the incident and whether the name of the accused is disclosed in the complaint or not.

In this case, the complaint is lodged immediately after the incident took place. The argument of Mr Naik that though the police station is situated near the office of the complainant, the complaint was lodged after 3-4 hours of the incident has no force. When such type of incidents take place, it is quite natural that some delay is bound to happen. So it cannot be said that there is delay in lodging the complaint. Even if assuming that there is some delay in lodging the complaint, at this juncture, while deciding Anticipatory Bail application, the court should not look into this and the said point can only be raised at the time of deciding at the trial. It also transpires from the complaint that the present applicant-accused, along with an unidentified person had gone to the office of the complainant with revolver. The complainant is also a businessman and Director of a company. The accused threatened to execute the transaction of the 17 vighas of land in his favour otherwise, to face the dire consequence and also threatened to kill the complainant. In the broad day light, after pushing the security guard of the complainant, the accused went to the office of the complainant o terrorise and pressurize him for executing some transactions in favour of the accused which is not

permissible under the law. Hence, when prima facie involvement of the accused is established in committing the crime, in the opinion of this court, this application deserves to be dismissed.

8. The next argument of Mr Naik that for the purpose of extorting money, false complaint is filed also has no force, as taking into consideration the complaint as well as the statement of the witnesses, the prima facie offence is committed by the present applicant-accused. It is submitted by Mr Naik that prima facie, an offence punishable under section 452 of the IPC is not attracted in this case, and for the other alleged offences, the maximum sentence provided for is upto three years and so also the present application deserves to be allowed. There is no force in this argument of Mr Naik. Prima facie, the police has registered offences under section 452, 294(b), 506 (2), 507 read with 114 of the IPC, and further for the offence punishable under section 452 of the IPC, punishment provided for is upto 7 years. At this stage, this court cannot decide whether section 452 of the IPC is attracted in this case or not. However, prima facie involvement of the accused in the case is established from the police papers. Again, the accused

being Director of a company or is in business, discretion of this court under section 438 of the Cr.P.C. cannot be exercised in his favour when his involvement in committing the crime is prima facie established. So far as the submission of the learned advocate that the applicant-accused put his mobile phone (mobile-cum-communicator which looked like a revolver) on the table of the complainant and the allegation made against the accused is false, is concerned, it is clearly mentioned in the complaint that the accused put the revolver on the table and when in close proximity the incident took place, there is no reason to wrongly identify the weapon like a revolver and hence there is no force in this argument. The investigation is at a crucial stage and the Investigating Officer will consider all these aspects during the investigation.

9. It transpires from the police papers that there are two closed-circuit cameras in the office of the complainant and each and every movement during the whole day is recorded in these cameras. During the investigation, a video CD is recovered by drawing panchnama by the police. Mr Hasurkar, learned APP has drawn attention of this court to some photographs which were taken from those security cameras from the office of

the complainant which clearly show the presence of the accused along with one another person at the relevant time when the alleged incident took place. Hence, it can be said that prima facie case is made out against the applicant-accused.

10. Learned APP has placed reliance on a decision in the case of ***Adri Dharan Das v. State of West Bengal (2005) 4 SCC 303*** and submitted that the present case does not prima facie appear to be one where any order in terms of section 438 of Cr.P.C. can be passed by this court.

11. The power exercisable under section 438 of the Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated, then the power is to be exercised under section 438 of the Cr.P.C. In the facts and circumstances of this case, and having heard the arguments of the learned Sr.counsel for the applicant and the learned APP for the State, this court is of the view that when the investigation is at a crucial stage and when prima facie involvement of the accused in the crime is established, the discretionary power exercisable under section 438 of the Cr.P.C. should not be

exercised in favour of the applicant-accused.

12. For the foregoing reasons, this application deserves to be dismissed and is accordingly dismissed. Rule is discharged.

[M.D. SHAH, J.]

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